

**EXHIBIT 29**

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BANKRUPTCY REFORM ACT OF 1994

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5116) to amend title II of the United States Code, as amended.

The Clerk read as follows:

H.R. 5116

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) Short Title.--This Act may be cited as the Bankruptcy Reform Act of 1994''.

(b) Table of Contents.--The table of contents is as follows:

Sec. 1. Short title.

TITLE I--IMPROVED BANKRUPTCY ADMINISTRATION

- Sec. 101. Expedited hearing on automatic stay.
- Sec. 102. Jurisdiction to review interlocutory orders increasing or reducing certain time periods for filing plan.
- Sec. 103. Expedited procedure for reaffirmation of debts.
- Sec. 104. Powers of bankruptcy courts.
- Sec. 105. Participation by bankruptcy administrator at meetings of creditors and equity security holders.
- Sec. 106. Definition relating to eligibility to serve on chapter 11 committees.
- Sec. 107. Increased incentive compensation for trustees.
- Sec. 108. Dollar adjustments.
- Sec. 109. Premerger notification.
- Sec. 110. Allowance of creditor committee expenses.
- Sec. 111. Supplemental injunctions.
- Sec. 112. Authority of bankruptcy judges to conduct jury trials in civil proceedings.
- Sec. 113. Sovereign immunity.
- Sec. 114. Service of process in bankruptcy proceedings on an insured depository institution.
- Sec. 115. Meetings of creditors and equity security holders.
- Sec. 116. Tax assessment.
- Sec. 117. Additional trustee compensation.

TITLE II--COMMERCIAL BANKRUPTCY ISSUES

- Sec. 201. Aircraft equipment and vessels; rolling stock equipment.
- Sec. 202. Limitation on liability of non-insider transferee for avoided transfer.
- Sec. 203. Perfection of purchase-money security interest.
- Sec. 204. Continued perfection.
- Sec. 205. Rejection of unexpired leases of real property or timeshare interests.
- Sec. 206. Contents of plan.

partnership was formed.

### Section 213. Impairment of Claims and Interests

The principal change in this section is set forth in subsection (d) and relates to the award of postpetition interest. In a recent Bankruptcy Court decision in *In re New Valley Corp.*, 168 B.R. 73 (Bankr. D.N.J. 1994), unsecured creditors were denied the right to receive postpetition interest on their allowed claims even though the debtor was liquidation and reorganization solvent. The New Valley decision applied section 1124(3) of the Bankruptcy Code literally by asserting, in a decision granting a declaratory judgment, that a class that is paid the allowed amount of its claims in cash on the effective date of a plan is unimpaired under section 1124(3), therefore is not entitled to vote, and is not entitled to receive postpetition interest. The Court left open whether the good faith plan proposal requirement of section 1129(a)(3) would require the payment of or provision for postpetition interest. In order to preclude this unfair result in the future, the Committee finds it appropriate to delete section 1124(3) from the Bankruptcy Code.

As a result of this change, if a plan proposed to pay a class of claims in cash in the full allowed amount of the claims, the class would be impaired entitling creditors to vote for or against the plan of reorganization. If creditors vote for the plan of reorganization, it can be confirmed over the vote of a dissenting class of creditors only if it complies with the ``fair and equitable'' test under section 1129(b)(2) of the Bankruptcy code and it can be confirmed over the vote of dissenting individual creditors only if it complies with the ``best interests of creditors'' test under section 1129(a)(7) of the Bankruptcy Code.

The words ``fair and equitable'' are terms of art that have a well established meaning under the case law of the Bankruptcy Act as well as under the Bankruptcy Code. Specifically, courts have held that where an estate is solvent, in order for a plan to be fair and equitable, unsecured and undersecured creditors' claims must be paid in full, including postpetition interest, before equity holders may participate in any recovery. See, e.g., *Consolidated Rock Products Co. v. Dubois*, 312 U.S. 510, 527, 61 S.Ct. 675, 685 (1941); *Dentureholders Protective Committee of Continental Inv. Corp.*, 679 F.2d 264 (1st Cir.), cert. denied, 459 U.S. 894 (1982) and cases cited therein.

With respect to section 1124(1) and (2), subsection (d) would not change the beneficial 1984 amendment to section 1129(a)(7) of the Bankruptcy code, which excluded from application of the best interests of creditors test classes that are unimpaired under section 1124.

The other subsections deal with the issue of late-filed claims. The amendment to section 502(b) is designed to overrule *In re Hausladen*, 146 B.R. 557 (Bankr. D. Minn. 1992), and its progeny by disallowing claims that are not timely filed. The amendment also specifies rules relating to the filing of certain governmental claims. These changes are not intended to detract from the ability of the court to extend the bar date for claims when authorized to do so under the Federal Rules of Bankruptcy Procedure. The amendments to

section 726(a) of the Code, governing the distribution of property of the estate in a chapter 7 liquidation, conform to the amendments to section 1129(b) and 502(b). The amendments to paragraphs (2) and (3) of section 726(a) assure that the disallowance of late-filed claims under new section 502(b)(4) does not affect their treatment under section 726(a).

#### Section 214. Protection of security interest in postpetition rents

Under current section 552 of the Bankruptcy Code, real estate lenders are deemed to have a security interest in postpetition rents only to the extent their security interest has been ``perfected'' under applicable State law procedures, *Butner v. United States*, 440 U.S. 48 (1979). Inclusion under section 552, in turn, allows such proceeds to be treated as ``cash collateral'' under section 363(a) of the Bankruptcy Code, which prohibits a trustee or debtor-in-possession from using such proceeds without the consent of the lender or authorization by the court. In a number of States, however, it is not feasible for real estate lenders to perfect their security interest prior to a bankruptcy filing; and, as a result, courts have denied lenders having interests in postpetition rents the protection offered under sections 552 and 363 of the Bankruptcy Code. See, e.g., *In re Multi-Group III Ltd. Partnership*, 99 B.R. 5 (Bankr. D. Ariz. 1989); *In re Association Center Ltd. Partnership*, 87 B.R. 142 (Bankr. W.D. Wash. 1988); *In re TM Carlton House Partners, Ltd.*, 91 B.R. 349 (Bankr. E.D. Pa. 1988); *In re Metro Square*, 93 B.R. 990 (Bankr. D. Minn. 1988). Section 214 provides that lenders may have valid security interests in postpetition rents for bankruptcy purposes notwithstanding their failure to have fully perfected their security interest under applicable State law. This is accomplished by adding a new provision to section 552 of the Bankruptcy Code, applicable to lenders having a valid security interest which extends to the underlying property and the postpetition rents.

Section 214 also clarifies the bankruptcy treatment of hotel revenues which have been used to secure loans to hotels and other lodging accommodations. These revenue streams, while critical to a hotel's continued operations, are also the most liquid and most valuable collateral the hotel can provide to its financiers. When the hotel experiences financial distress, the interests of the hotel operations, including employment for clerks, maids, and other workers can collide with the interests of persons to whom the revenues are pledged. Section 214 recognizes the importance of this revenue stream for the two competing interests and attempts to strike a fair balance between them. Thus, subsection (a) expressly includes hotel revenues in the category of collateral in which postpetition revenues are subject to prepetition security interests, and subsection (b) includes such revenues in ``cash collateral'' as defined in section 363.

These clarifications of the rights of hotel financiers are, however, circumscribed. A critical limit is the ``equities of the case'' provision in subsection (a) which is designed, among other things, to prevent windfalls for secured creditors and to give the courts broad discretion to balance the protection of secured creditors, on the one hand, against the strong public policies favoring continuation of jobs,